

MONTANA DISASTER AND EMERGENCY PLAN



VOLUME XV

Continuity of Government (COG)

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CONTINUITY OF GOVERNMENT (COG)

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APPROVAL IMPLEMENTATION

This plan is hereby approved for implementation and supersedes all previous editions.



Janet R. Kelly
Director, Department of Administration

3/12/07

Date Signed

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EXECUTIVE SUMMARY

During any incident, emergency or disaster that affects the State of Montana, the citizens rely on state government to provide critical and essential services. As such, government has the responsibility to ensure that an effective plan is ready and available, regardless of the level of destruction, to ensure the stability and survivability of state government.

The Department of Administration, as the lead agency for Continuity of Government (COG) planning per Volume I of the Montana Disaster and Emergency Plan, is responsible for assisting with re-establishment of state government through the development of the COG plan. The following COG plan is intended to ensure a timely, safe, and efficient resumption of Montana's state government.

This COG plan specifically addresses state government continuation, resumption, and recovery from any incident, emergency, or disaster that threatens to obstruct state government's ability to provide basic governmental services. The COG plan focuses on three critical areas: Succession, Seat of Government and Emergency Powers.

This plan does not address building specific emergency action planning or agency specific Continuity of Operations Planning (COOP) plans, nor does it address the Department of Administration's plan for effectively coordinating agency resources in response to any incident, emergency, or disaster affecting state government. These will be addressed in the individual state agency COOP plans and in the Department of Administration's Continuity Management Plan.

1. OVERVIEW

Purpose: Continuity of Government (COG) is the preservation, maintenance, or reconstitution of the state government's ability to carry out its constitutional responsibilities under all circumstances that may disrupt normal operations. This plan describes the constitutional and statutory provisions related to the COG.

Scope: This plan addresses state government continuation, resumption, and recovery from any incident, emergency, or disaster that threatens to obstruct state government's ability to carry out its constitutional responsibilities in three specific areas: seat of government, lines of succession, and emergency powers. It does not address building specific emergency action planning or agency specific Continuity of Operations Planning (COOP), nor does it address the Department of Administration's efforts to respond to any incident, emergency or disaster affecting state government. The above will be addressed in the individual state agency COOP plans and in the Department of Administration's Continuity Management Plan.

Authorities: The Constitution of the State of Montana – Articles III and VI.
Montana Code Annotated – Title 2, Chapter 16 and Title 10, Chapter 3.
United States Code (USC) – Title 42, Section 5121 *et seq.*, known as The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended.

Activation: The Governor of the State of Montana or the Governor's successor may enact the COG plan or any provisions contained within it at any time.

Maintenance: The Department of Administration will coordinate all updates, revisions, or changes to the COG plan, consistent with state law.

2. CONTINUITY OF GOVERNMENT – CONCEPT OF OPERATIONS

Lines of Succession

Article VI, section 14 of the Montana Constitution provides for lines of succession as follows:

Section 14. Succession. (1) *If the governor-elect is disqualified or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect is able to assume office, or until the office becomes vacant.*

(2) *The lieutenant governor shall serve as acting governor when so requested in writing by the governor. After the governor has been absent from the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.*

(3) *He shall serve as acting governor when the governor is so disabled as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor shall continue to serve as acting governor until the governor is able to resume the duties of his office.*

(4) *Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.*

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter, when the governor transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

Additionally, Article VI, section 6 of the Montana Constitution addresses vacancies in office, as follows:

Section 6. Vacancy in office. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.

Montana statutory law provides additional guidance with regard to vacancy and succession as follows:

2-16-501. Vacancies created. An office becomes vacant on the happening of any one of the following events before the expiration of the term of the incumbent:

- (1) the death of the incumbent;
- (2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent suffers from a mental disorder and is in need of commitment;
- (3) resignation of the incumbent;
- (4) removal of the incumbent from office;
- (5) the incumbent's ceasing to be a resident of the state or, if the office is local, of the district, city, county, town, or township for which the incumbent was chosen or appointed or within which the duties of the incumbent's office are required to be discharged;
- (6) except as provided in 10-1-1008, absence of the incumbent from the state, without the permission of the legislature, beyond the period allowed by law;
- (7) the incumbent's ceasing to discharge the duty of the incumbent's office for the period of 3 consecutive months, except when prevented by sickness, when absent from

the state by permission of the legislature, or as provided in 10-1-1008;

(8) conviction of the incumbent of a felony or of an offense involving moral turpitude or a violation of the incumbent's official duties;

(9) the incumbent's refusal or neglect to file the incumbent's official oath or bond within the time prescribed;

(10) the decision of a competent tribunal declaring void the incumbent's election or appointment.

2-16-511. Vacancy in office of governor and lieutenant governor. *(1) If the offices of both the governor and the lieutenant governor become vacant, the president of the senate shall become governor and shall appoint a lieutenant governor.*

(2) If the president of the senate is unable to assume the office of governor, the speaker of the house shall become governor and a lieutenant governor shall be elected in accordance with the provision of 2-16-512.

2-16-512. Election by legislature if president of senate and speaker unable to assume office of governor. *(1) If neither the president of the senate nor the speaker of the house of representatives is able to assume the office of governor, the legislature, meeting in joint session, shall elect a governor and a lieutenant governor.*

(2) When the speaker of the house becomes governor, the legislature will meet in joint session and shall elect a lieutenant governor.

2-16-513. Succession in case of termination or incapacitation of primary successors. *(1) If, because of an enemy attack upon the United States, the governor, lieutenant governor, president pro tempore of the senate,*

and speaker of the house are killed or rendered unable to serve as governor, the senior member of the legislature shall act as governor.

(2) He shall call an emergency session of the legislature at a safe location within the state. The legislature meeting in joint session shall elect a governor.

(3) For the purposes of this section, the member with seniority is the member who has served in the legislature for the longest continuous period of time up to and including his current term. If two or more members of the legislature have equal seniority, the line of succession among them is from eldest to youngest in age.

2-16-514. Successor to serve until next general election. *The successor to the governor and the lieutenant governor shall serve until the next general election and shall have all the powers, duties, and emoluments of the respective offices.*

2-16-515. Governor and lieutenant governor incapacitated. *(1) If both the governor and lieutenant governor are unable to serve as governor, the president of the senate shall become acting governor until the governor or lieutenant governor is able to resume the duties of the office.*

(2) If the president of the senate is unable to become acting governor, the speaker of the house of representatives shall become acting governor.

In the event that the governor is unavailable or incapacitated, Section 2-16-521, MCA, outlines the powers of the acting governor as follows:

2-16-521. Powers of acting governor. *(1) Every provision of the laws of this state in relation to the powers and duties of the governor and in relation to acts and duties to be performed by others toward him extends to*

the persons performing for the time being the duties of governor.

(2) An acting governor shall have all the rights, duties, and emoluments of the office of governor while he is so acting.

Additionally, section 10-3-602, MCA, entitled, "filling vacancy of governorship," directs that "[f]ollowing an enemy attack, the line of succession to the office of governor shall be extended as provided in Title 2, chapter 16, part 5."

Finally, sections 2-16-502 through -510 contain statutory provisions related to resignations, notice of removal, the inability of elective officers' (other than the Governor) to perform and the manner of filling the vacancy, and powers and duties of officers filling unexpired terms.

Tab I to this plan contains the line of succession in the event that the Governor is unavailable or incapacitated.

Seat of Government

Article III, section 2 of the Montana Constitution states:

Section 2. Continuity of government. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Section 10-3-607, MCA, outlines the actual procedure required to move the seat of government as follows:

10-3-607. Relocating seat of state government. *If the seat of state government at Helena is rendered unsuitable for use in that capacity, the seat of state government may be moved to an alternate location within the boundaries of the state of Montana by proclamation of the governor. He shall consider other Montana cities in order of their population in the last federal census, giving consideration to available communications, office space, and such other factors as may seem to him pertinent. Such move of the seat of government shall be effective until it is again moved by proclamation of the governor or action by the legislature.*

The Department of Administration, through its Continuity Management Plan, is responsible for assisting with the relocation of the seat of state government. The appropriate proclamation format is included as Tab II of this plan.

Emergency Powers

During any incident, emergency, or disaster, the Governor has the responsibility to ensure that necessary actions occur to provide for the safety and security of the State of Montana and its citizens.

The general statutory provisions related to disasters and emergencies are found at Title 10, chapter 3, MCA. The general authority of the governor during an emergency or disaster is outlined in section 10-3-104, MCA, as follows:

10-3-104. General authority of governor. (1) *The governor is responsible for carrying out parts 1 through 4 of this chapter.*

(2) *In addition to any other powers conferred upon the governor by law, the governor may:*

(a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(b) direct and compel the evacuation of all or part of the population from an emergency or disaster area within the state if the governor considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(c) control ingress and egress to and from an incident emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.

(3) Under this section, the governor may issue executive orders, proclamations, and regulations and amend and rescind them. All executive orders or proclamations declaring or terminating a state of emergency or disaster must indicate the nature of the emergency or disaster, the area threatened, and the conditions that have brought about the declaration or that make possible termination of the state of emergency or disaster.

Additionally, the following statutes set forth the means by which the Governor may declare an emergency, a disaster, or an incident, as well as the emergency expenditures authorized by law.

10-3-302. Declaration of emergency -- effect and termination. *(1) A state of emergency may be declared by the governor when he determines that an emergency as defined in 10-3-103 exists.*

(2) An executive order or proclamation of a state of emergency shall activate the emergency response and disaster preparation aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and be authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disasters and disaster-related emergencies.

(3) A state of emergency may not continue for longer than 20 days unless continuing conditions of the state of emergency exist, which shall be determined by a declaration of an emergency by the president of the United States or by a declaration of the legislature by joint resolution of continuing conditions of the state of emergency.

10-3-303. Declaration of disaster -- effect and

termination. (1) A state of disaster may be declared by the governor when he determines that a disaster has occurred.

(2) An executive order or proclamation of a state of disaster shall activate the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and be authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disaster and disaster-related emergencies.

(3) A state of disaster may not continue for longer than 30 days unless continuing conditions of the state of disaster exist, which shall be determined by a declaration of a major disaster by the president of the United States or by the declaration of the legislature by joint resolution of continuing conditions of the state of disaster.

(4) The governor shall terminate a state of emergency or disaster when:

(a) the emergency or disaster has passed;

(b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or

(c) at any time the legislature terminates the state of emergency or disaster by joint resolution. However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue.

10-3-304. Dissemination. *An executive order or proclamation issued under this part shall be disseminated promptly by means calculated to bring its contents to the attention of the general public. Unless the circumstances attendant upon the emergency or disaster prevent or impede it, the executive order or proclamation will be filed promptly with the division, the secretary of state, and clerk and recorders of the counties involved.*

10-3-305. Governor commander-in-chief -- duties. (1) *During an incident and during a state of emergency or disaster, the governor is commander-in-chief of the militia and of all other forces available for incident, emergency, or disaster duty. To the greatest extent possible, the governor shall delegate or assign command authority by prior arrangement embodied in the state disaster and emergency plan and program and appropriate executive orders.*

(2) *The governor shall use the services and facilities of the existing officers and agencies of the state, and all officers and agencies shall cooperate with and extend their services and facilities to the governor as the governor may request in the carrying out of the purposes of parts 1 through 4 of this chapter.*

10-3-310. Incident response -- authority --

appropriation -- expenditures -- recovery -- rules. (1)

The governor may by executive order upon request of the local governing body or its authorized agent activate that part of the state disaster and emergency plan pertaining to incident response. The order may be issued for any year, for any part of a year, or upon occurrence of an incident.

(2) *Upon approval of an executive order pursuant to this section:*

(a) that part of the state disaster and emergency plan pertaining to incidents becomes effective;

(b) the division may use any of the resources usable by the division during a state of emergency or disaster to respond to the incident; and

(c) there is statutorily appropriated, as provided in 17-7-502, to the office of the governor, and the governor is authorized to expend from the general fund an amount not to exceed \$10,000 per incident and not to exceed \$100,000 for incidents in a biennium.

(3) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, upon activation of the incident response portion of the state disaster and emergency plan. Money appropriated by this section may be used only for incident response costs of the state and may not be used to reimburse a local government for incident response costs incurred by that local government.

(4) In the event of recovery of money expended pursuant to this section, the spending authority must be reinstated to the level reflecting the recovery.

(5) The department may adopt rules to implement this section.

10-3-311. Emergency or disaster expenditures --

restrictions. *(1) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and needs arising from an*

emergency or disaster, as defined in 10-3-103, which results in damage to the works, buildings, or property of the state or any political subdivision thereof or which menaces the health, welfare, safety, lives, or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that:

(a) such political jurisdiction has exhausted all available emergency levies;

(b) the emergency is beyond the financial capability of the political jurisdiction to respond and for which no appropriation in the affected fund is available in sufficient amount to meet the emergency or disaster; or

(c) federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

(2) No expenditures for flood-related damages may be made to assist a political subdivision that is sanctioned because it has flood hazard areas identified under the national flood insurance program, parts 59 through 77 of 44 CFR, and does not have in effect adequate regulations for such areas or has failed to enforce such regulations as required by the national flood insurance program.

(3) The governor is charged with the implementation of the program.

(4) The administration and development of rules for implementation of this section must be promulgated by the department.

10-3-312. Maximum expenditure by governor -- appropriation. *(1) Whenever an emergency or disaster is declared by the governor, there is statutorily appropriated*

to the office of the governor, as provided in 17-7-502, and, subject to subsection (2), the governor is authorized to expend from the general fund an amount not to exceed \$16 million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same biennium. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund an amount not to exceed \$500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

Additionally, during a natural disaster, the Governor has the constitutional power to call out any part of all of the militia forces of the state to protect life and property. Article VI, section 13 of the Montana Constitution provides:

Section 13. Militia. *(1) The governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States. He may call out any part or all of the forces to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters.*

(2) The militia forces shall consist of all able-bodied citizens of the state except those exempted by law.

State Government Coordinating Group (SGCG)

The SGCG is responsible for assisting the Governor in establishing important priorities and policies during any incident, emergency, or disaster affecting the State. The Governor, when notified of an incident, has the authority to assemble all or a portion of the SGCG.

The SGCG consists of state agency directors, the governor's cabinet, and state elected officials including the Attorney General, Superintendent of Public Instruction, Secretary of State, and the Public Services Commission, or others as determined necessary by the Governor.

3. Definitions

Continuity of Government (COG) - The preservation, maintenance, or reconstitution of the state government's ability to carry out its constitutional and statutory responsibilities under all circumstances that may disrupt normal operations.

Continuity of Operations (COOP) – An agency's plan to ensure continuity of essential functions under all circumstances through tests, training, exercises and interoperable communication.

Disaster – The occurrence or imminent threat of widespread or severe damage, injury, loss of life or property resulting from any natural or man-made cause (Section 10-3-103, MCA).

Emergency – The imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize (Section 10-3-103, MCA).

Incident – An event or occurrence, caused by either an individual or by a natural phenomenon, requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources (Section 10-3-103, MCA).

Line of Succession – Identifies who is in charge of state government as defined under Montana's Constitution and statutes.

Seat of Government Relocation Proclamation – A proclamation signed by the Governor authorizing the seat of state government be moved due to a disaster, emergency or incident rendering Helena unsuitable for use in that capacity.

4. Record of Changes

[illegible]

5. TABS

TAB I – LINES OF SUCCESSION

TAB II – SEAT OF GOVERNMENT PROCLAMATION

Tab I - State of Montana Lines of Succession

The following is the line of succession for office of Governor of the State of Montana as defined in the Montana Constitution and Montana law:

Governor

Lieutenant Governor

President of the Senate

Speaker of the House

Senior Member of the Legislature

*If tie, then Eldest of Senior Member of the Legislature to
Youngest*

Tab II – Seat of Government Proclamation



PROCLAMATION

WHEREAS, according to Section 10-3-607, MCA, if the seat of state government at Helena is rendered unsuitable for use in that capacity, the seat of state government may be moved to an alternate location within the boundaries of the state of Montana by proclamation of the Governor; and

WHEREAS, the Governor shall consider other Montana cities in order of their population in the last federal census, giving consideration to available communications, office space, and such other factors as may seem pertinent; and

WHEREAS, such move of the seat of government shall be effective until it is again moved by proclamation of the Governor or action by the legislature.

NOW, THEREFORE, I, BRIAN SCHWEITZER, Governor of the State of Montana, do hereby move the seat of Montana government to _____, Montana.

GIVEN under my hand this _____
day of _____

Brian Schweitzer, Governor

ATTEST:

Brad Johnson, Secretary of State